



8BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02/03/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P. (MD)No.3596 of 2019

and

Crl.MP (MD)Nos.2064 and 2065 of 2019

WEB COPY

1.Mr.Shaji
2.Mr.Antony
3.Mr.Sickarthoor

: Petitioners/A1 to A3

Vs.

1.The Inspector of Police,
Nithiravilai Police Station,
Kanyakumari District.
(Crime No.242 of 2018)

: R1/Complainant

2.Mr.Patrick

: R2/De-facto Complainant

Prayer:Criminal Original Petition has been filed under Section 482 Cr.P.C. to call for the records pertaining to the Charge Sheet in CC No.32 of 2019 pending on the file of the Judicial Magistrate No.II, Kuzhithurai, Kanyakumari District and quash the same.

For Petitioner : Mr.T.Lajapathi Roy

For 1st Respondent : Mr.B.Nambi Selvan
Additional Public Prosecutor

For 2nd respondent : Mr.G.Aravinthan

O R D E R

This criminal original petition has been filed seeking quashment of the case in CC No.32 of 2019 pending on the file of the Judicial Magistrate No.II, Kuzhithurai, Kanyakumari District.

2.The case of the prosecution in brief:-

The de-facto complainant is owning property in Survey No.226/A measuring about 10 cents. When the de-facto complainant was put up a compound wall in the property, the accused persons made objection stating that the property belongs to the college and also made trouble. Because of the above said enmity, on 22/11/2018 at about



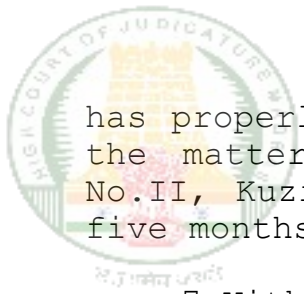
5.30 am, the accused persons armed with iron rod and knife, trespassed into the property and damaged the compound wall worth about Rs.54,000/- and also criminally intimidated the de-facto complainant. Based upon the complaint given by the de-facto complainant, a case in Crime No.242 of 2018 was registered and after completing the investigation, final report was filed alleging that these petitioners have committed the offences under section 447, 427 and 506(ii) IPC.

3. Seeking quashment of the above said final report, this petition has been filed by the accused persons on the ground that it is purely a civil dispute and the property belonged to the Thoothoor Yudha College and the de-facto complainant has no right over the property and he put up an illegal wall, blocking the pathway to the petitioners' land. According to the petitioners, it is a clear case of abuse of process of court and law and mala fide prosecution.

4. Heard the learned counsel appearing for the petitioners. Even though the 2nd respondent has been served and appeared through counsel, there was no representation at the time of argument.

5. This court has called for the entire CD file to find out whether any damage has been done to the compound wall of the petitioner and the same has been produced. Perusal of the CD file shows that the photographs have been taken in the disputed property. It is seen that notified that damage has been done to the stone blocks, this according to the de-facto complainant, has been done and committed by the accused persons, due to previous enmity. As stated by the petitioners, the compound wall has been erected blocking the way to both the properties. So because of that only, according to them, trouble has arisen between them. But whether the de-facto complainant put up the compound wall blocking the pathway to the petitioners' property cannot be a matter for consideration in this petition. Absolutely, no material has been placed before this court to substantiate this ground. When the damage has been alleged to have been made by the petitioners and prima facie materials have also been collected during the course of investigation and final report has been filed, the factual aspect cannot be gone into. Except stating that it is a mala fide prosecution, no other ground has been made in the petition.

6. Regarding sections 447 and 506(i) IPC, there are enough materials. So absolutely no merit in the petition, which warranting quashment of the proceedings. It has to be taken to its logical conclusion. But however, considering the age of the 3rd petitioner, his personal appearance is dispensed with before the trial court on condition that within 15 days from the date of receipt of a copy of this order, he shall appear before the trial court and file an undertaking affidavit that he will not indulge in such type of activities and he will appear before the trial court as and when



has properly represented by an Advocate. Considering the oldness of the matter, there shall a direction to the Judicial Magistrate No.II, Kuzithurai to expedite the trial process within a period of five months from the date of receipt of a copy of this order.

7.With the above said directions, this criminal original petition stands dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

/TRUE COPY/

/ /2022
Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1 The Judicial Magistrate,
Kuzhithurai, Kanyakumari District.
- 2 The Inspector of Police,
Nithiravilai Police Station,
Kanyakumari District.
- 3 The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-9792[F] dated 03/03/2022)

Crl.O.P. (MD)No.3596 of 2019
02/03/2022

MK/28.03.2022/3P/5C